UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

AMC ELECTRICAL SERVICES, INC.

Employer

and Case No. 29-RC-9789

LOCAL 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Henry Powell, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that AMC Electrical Services, Inc., herein called the Employer or the company, a domestic corporation with its principal office and place of business located at 3819 Fort Hamilton Parkway, Brooklyn, New York, herein called its Brooklyn facility, has been engaged in the electrical contracting business. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, purchased and received at its

Brooklyn facility, electrical supplies valued in excess of $50,000 directly from firms located within the State of New York, which firms, in turn, purchased said supplies directly from entities located outside the State of New York.

Based on the stipulation of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Based on the stipulation of the parties, and the record as a whole, I find that Local 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Petitioner or the Union, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The Union is a labor organization within the meaning of Section 2(5) of the Act.

The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following unit is appropriate for the purposes of collective bargaining:

> All full-time and regular part-time electricians, maintenance mechanics and helpers, employed by the Employer at its Brooklyn, New York, facility, but excluding all other employees, guards and supervisors as defined in Section 2(11) of the Act.

However, the Employer contends that it is not engaged in the construction business and hence, the Board should not employ the eligibility formula set forth in *Daniel Construction Company, Inc*., 133 NLRB 264 (1961), *as modified,* 167 NLRB 1078 (1967). By contrast, the Petitioner takes the position that *Daniel* applies.

In *Daniel Construction Company,* the Board devised a voting eligibility formula tailored to the "intermittent nature of working conditions in the construction industry." *Daniel*, 133 NLRB at 266. In doing so, the Board recognized that during the course of a year, a construction employee may work on multiple short-term projects for multiple employers, and may "experience short layoffs due to material shortages or because the…work is dependent on the work of various other crafts." *Daniel*, 133 NLRB at 267; *see also Wilson & Dean Construction Co., Inc*., 295 NLRB 484 (1989). Accordingly, the Board held in Daniel that in addition to those employees meeting the Board's standard eligibility criteria, all bargaining unit employees who were employed for "at least 30 days in the 12-month period preceding the eligibility date for the election," or who "had some employment in that [12-month] period and who ha[d] been employed for 45 days or more within the 24 months immediately preceding the eligibility date for the election," were eligible to vote if they had "not been ..been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed." *Daniel*, 133 NLRB at 267; 167 NLRB at 1081. The Board reasoned that this eligibility formula enfranchised "those employees who have a reasonable expectation of future employment…and thereby have a continuing interest in the Employer's working conditions," while at the same time excluding employees with only a negligible likelihood of future employment. *Daniel*, 167 NLRB at 1081.

The Board subsequently modified the *Daniel* formula in *S.K. Whitty & Co*., 304 NLRB 776 (1991), but re-adopted it shortly thereafter in *Steiny and Company, Inc*., 308 NLRB 1323 (1992)(*overruling S.K. Whitty, supra)*. Like the Employer in the instant case, the employer in *Steiny and Company, Inc*., was an electrical contractor. *Steiny*, 308

NLRB at 1323; *see also Daniel J. Ellis, d/b/a Ellis Electric*, 315 NLRB 1187 (1994)(*Daniel* formula applied to an electrical contractor). After taking note of the "fluctuating nature and unpredictable duration of construction projects," and the fact that construction employees continued to "experience intermittent employment, be employed for short periods on different projects, and work for several different employers in the course of a year," the Board declared that the *Daniel* formula had "proven to be an effective, efficient, and familiar means of determining voter eligibility in [the construction] industry for over 30 years." *Steiny*, 308 NLRB at 1325. Without the *Daniel* formula, moreover, "the intermittent nature of work [in the construction industry would] require the individual determination of the eligibility status of large numbers of laid-off employees." *Steiny*, 308 NLRB at 1325. This, in turn, would result in prolonged litigation and delays in the election process, which "would be especially critical in the construction industry because of the limited duration of many projects." *Id.* Accordingly, the Board "decided that the *Daniel* formula is applicable in all construction industry elections," finding "no reasonable, feasible, or practical means by which to distinguish among construction industry employers in deciding whether a formula should be applied." *Steiny*, 308 NLRB at 1326; *see also Brown & Root, Inc*., 314 NLRB 19, 28 (1994). The only exceptions articulated by the Board in *Steiny* were (1) "where the employer clearly operates on a seasonal basis," and (2) where parties "stipulate not to use the Daniel formula." *Steiny*, 308 NLRB at 1328 n. 16; *see also Signet Testing Laboratories, Inc*., 330 NLRB 1 (1999). Neither of these exceptions is relevant to the instant case.

The record reflects that the Employer has an advertisement in the Ambassador Yellow Pages for the Borough of Manhattan, which reads in part: "Residential – Commercial – Industrial – Serving the 5 Boros – Emergency Service – All Electrical Repairs – Wiring – Circuit Breakers – Violations Removed – Heating / AC Controls – … Licensed & Insured – Installations – Renovations – New Wiring – Fire Alarm Systems – Temp. Service – 220 Volt Wiring – …HVAC Wiring – Rewiring – Alterations – Remodeling – Indoor – Outdoor – Switches – Outlets – Ceiling Fans." The Employer's President, Michael Castagliola, conceded that the company has performed all of these various types of electrical work, and that it holds a license issued by the Department of Buildings, Bureau of Electrical Control of the City of New York. Although Castagliola claimed that it was "really hard to say" whether or not the Employer had performed "over 100" jobs in commercial buildings, he testified that the Employer had worked on "maybe 10 commercial jobs" in the four years of its existence, and had performed electrical subcontracting work in at least two large office buildings in Manhattan. The record is devoid of evidence that the work performed by the Employer differs from the electrical contracting work performed by *Steiny and Company, Inc*., *supra*, or *Daniel J. Ellis, d/b/a Ellis Electric, supra,* or that the working conditions of the Employer's employees are any less "intermittent" than those of other workers in the construction industry. Accordingly, I find that the eligibility formula set forth in *Daniel* and *Steiny* is applicable to the employees in the voting unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of

election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are (a) employees in the unit who were employed for at least 30 days in the 12-month period preceding the eligibility date for the election, and (b) employees in the unit who had some employment during that 12-month period and were employed for at least 45 days within the 24 months immediately preceding the eligibility date for the election. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by Local 3, International Brotherhood of Electrical Workers, AFL-CIO, or no labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should

have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before March 1, 2002. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by March 8, 2002.

Dated at Brooklyn, New York, February 22, 2002.

/s/ Alvin Blyer
Alvin P. Blyer
Regional Director, Region 29
National Labor Relations Board
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1760-9167-2400